

**Meeting Summary  
DNR Clean Air Act Task Force  
February 7, 2002**

**Participants:** Rob Kennedy, Citizens for a Better Environment; Ken Yunker, SEWRPC; Ernie Stetenfeld, American Automobile Association - Wisconsin; Tom Walker and Patrick Stevens, WI Transportation Builders Association; Bill Skewes, WI Utilities Association; Bob Fassbender, Hough Fassbender Osborne & Associates; Kathleen Standen and Kris McKinney, Wisconsin Energy; Michelle Pluta, Alliant Energy; Jim Beasom, Appleton Papers Inc.; Ed Wilusz, WI Paper Council; Hank Handzel, DeWitt Ross & Stevens, for Printing Industries of Wisconsin and WI Paper Council; Jeff Schoepke, WI Manufacturers & Commerce; John Mooney, US EPA Region 5; Linda Bochert, Michael Best & Friedrich; Todd Palmer, DeWitt Ross & Stevens; Myron Hafele, Kohler Co.; Dee Olson, Sheboygan Co. Chamber of Commerce; Patrick Vander Sanden, Office of Rep. Joe Leibham; Tom Reed, Manitowoc Public Utilities; Marc Bentley, Bentley Government Affairs; Jessica Laub, American Lung Association of WI; Nicole Anderson, Clean Cities - Southeast Area Inc.; Gary Van Helvoirt, WI Public Service Corp.; Harold Frank, Dairyland Power Cooperative; Dwight McComb, Federal Highway Administration; Dave Kluesner, International Paper; John Stolzenberg, Legislative Council Staff; Lou Skibicki, RTP Environmental Associates; David Donovan, Xcel Energy- WI; Tom Friedrichs, Cardinal Environmental; Dave Seitz, RMT Inc.; Sally Jenkins, Public Service Commission of WI; Carole Schaeffer, Cheryl Rezabek and Laurie Palchik, WI Dept. of Administration; Pam Christenson, WI Dept. of Commerce; Carol Cutshall, Carolyn Amegashie, Pat Trainer, Rose Casey and Jerry Medinger, WI Dept. of Transportation; Lakshmi Sridharan, Peter McMullen, Jessica Lawent, Frank Schultz, DNR Southeast Region; Lloyd Eagan, Dennis Koepke, Mike Friedlander, Larry Bruss, Bob Lopez, Muhammed Islam, Anne Bogar, Andy Stewart, Jon Heinrich, Anne Urbanski (notetaker), DNR Bureau of Air Management.

**Next meeting:** No meeting date set by the group.

**Discussion:**

**Redesignation to attainment of the 1-hour ozone standard:** Larry Bruss said the redesignation would apply to eight Wisconsin counties. DNR wants to develop a redesignation and maintenance plan that doesn't allow backsliding. Any changes to either federal or state regulations could cause significant delays in the redesignation process, which would be problematic and counterproductive. Since ozone control has been a regional effort, Illinois, Indiana and Wisconsin need to develop a regional approach and submit similar maintenance and contingency plans. Funding for maintenance and contingency (M&C) activities could pose some financial problems for Wisconsin because redesignation to attainment might result in decreased levels of funding for Congestion, Mitigation and Air Quality Funding from US EPA and USDOT. Wisconsin also stands to lose some new source permit fees due to less-rigorous permit requirements in attainment areas.

- Lloyd Eagan said expected that EPA Region 5 would handle this redesignation request as a regional effort by reviewing the three states' plans together as part of an overall package. She thought EPA would do separate but simultaneous "rule makings" for all three states.
- John Mooney said EPA would prefer to review all three plans together. One reason he gave for this preference is that the agency wants to base redesignation on the same 3 years of data for all three states.
- Bruss outlined the elements needed for a maintenance plan. This includes modeled attainment demonstrations for 1990, 1999, 2007 and then 10 years after redesignation (2012); a (revised/upgraded?) monitoring network; and transportation conformity, with an emissions budget developed using the MOBILE 5 emissions model.
- Ken Yunker asked when the draft mobile emissions budget would be available for review; Bruss said no later than March 2002.
- Bruss said that the LADCO technical experts have agreed on a contingency approach, which had not yet been approved by the 4 states' air directors. For 2003-04, a violation of the ozone standard would trigger the contingency plan in the four states, which would continue to implement the attainment demonstration and Rate of Progress reductions but then would also implement other actions, e.g. Wisconsin NOx SIP reductions, the BP Amoco consent order in Indiana, federal non-road-engine

emission standards, Illinois and Indiana NOx SIP reductions. The deadline for implementing NOx SIP controls is May 31, 2004.

- Bruss said that during 2005-2007, a second contingency plan trigger would occur if the region has two exceedances in any single year, or multiple exceedances over three years at any single monitor, but not if exceedances are sporadic and widely spaced geographically.
- Bob Fassbender said there would be some concerns about the contingency plans being triggered by anything other than a violation of the 1-hour standard, since the Clean Air Act says that a violation triggers a contingency plan. He asked if DNR thought it would get more flexibility with an earlier-than-required trigger; Bruss said the trigger would merely be a commitment to evaluate the maintenance plan, subject to a public process. The triggering event could occur in Indiana or Illinois, but is more likely to occur in Wisconsin, which has the most frequent exceedances and the highest ozone concentrations.
- Pat Stevens asked what was the rationale for not basing the trigger on a violation of the standard? Bruss explained that this particular trigger merely has DNR consider control programs, it does not require DNR to impose any programs. John Mooney said the trigger would bring stakeholders back to the table a step earlier than would happen if the trigger were an actual violation of the ozone standard.
- Fassbender said industry's position would likely be that any triggers in the maintenance plan should be predicated on an actual violation, and that there should be no revisions to the maintenance plan, even with public hearings, unless a violation occurs. Bob Lopez responded that the State Implementation Plan contains DNR's commitment to a doing a mid-course correction if conditions warrant that.
- Rob Kennedy asked if there was a possibility that low-sulfur diesel fuel and gasoline might be available regionally as a result of this plan. Bruss responded that federal requirements come online for gasoline in 2004 and for low-sulfur diesel fuel in 2006-2007.
- Bruss outlined the contingency plan that would be in place during 2008-2012, the years immediately following Wisconsin's original 2007 attainment date. The "Level 1" trigger would happen if any site had two exceedances in a single year, or more than two exceedances in three years, and/or the region showed a 5% increase in emissions in 2005 or 2008 compared to the 1999 emission inventory. At that point the state would evaluate which control measures would be necessary to avoid violating the ozone standard and adopt them within 12 months. Tom Walker asked why the task force was arguing about the 2000 maintenance plan when the state already has a SIP? Bruss said a lot of the possible scenarios probably will never happen, and EPA will probably eliminate the one-hour standard by 2006 or so. Wisconsin has to submit a maintenance plan that EPA will approve for our current circumstances; however, it's likely we will never have to implement it.
- Bruss said that a violation of the ozone standard would constitute a "level 2" trigger in the maintenance plan, requiring a comprehensive evaluation and then adoption of control measures within 18 months. Pat Stevens asked about the exact requirement in the Clean Air Act. Mooney replied that the Clean Air Act says a state must "promptly correct" a violation, which operationally means between 12 and 18 months. Eagan noted that in Wisconsin, the rule-making process takes at least a year.
- Bruss outlined a list of contingency measures DNR is considering for the maintenance plan, including offsets and/or LAER for major sources, reimposing RACT, expanding controls to a wider geographic area, and other options. Putting these options in the maintenance plan does not commit DNR to do any of them if the plan is triggered. Yunker asked how much the geographic area of controls (currently 8 counties) might be expanded; Bruss said DNR might need to expand the control area to anywhere between 19 and 72 counties. Walker asked if any of these measures would require a new SIP submittal; Bruss replied that DNR is only committing to studying those measures if necessary.
- Mobile source contingency measures, according to Bruss, include transportation control measures, enhanced I/M, and California engine standards, among others. DNR would provide an estimated range of potential reductions from each measure. Lopez noted that these measures are known to reduce emissions, and the Clean Air Act enables the state to implement them. Carol Cutshall asked about the term "high-enhanced IM", which Wisconsin DOT does not use. Bruss replied that, based on performance criteria, EPA defines Wisconsin's I/M program as "low-enhanced". Cutshall said the

I/M program seems to be generating fewer air-quality credits than it used to. She asked what it meant if DNR identified a control measure as a “contingency measure”. Bruss reiterated that this did not imply a commitment by DNR to implement a measure, only a commitment to evaluate it.

- Bruss outlined DNR’s schedule for developing the plan between February and October 2002. Eagan noted that the maintenance plan is part of the bureaucratic exercise that the three states must go through so that EPA can complete their redesignation request, and that DNR is not proposing any additional restrictions on Wisconsin facilities. Fassbender said that WMC is unclear about how it can affect the development of the maintenance plan. Eagan replied that the maintenance plan commits Wisconsin only to evaluating additional control measures. Fassbender said that state statutes specify that DNR cannot commit to any control measures not required by the Clean Air Act, and WMC supports that. He suggested that DNR should remove those measures from the federal SIP and make them “state-only” requirements, and asked how that would affect timely redesignation for Wisconsin. Eagan said that kind of action would hurt Wisconsin’s redesignation request because EPA would view it as backsliding on previous commitments, and she doesn’t want to instigate a lengthy debate within EPA. Fassbender said that WMC’s main concern is whether NOx reductions should be federally enforceable under the 1-hour SIP, or state enforceable and included in the 8-hour ozone plan. Eagan said she would be happy to hold a separate meeting to discuss those concerns with industry representatives.

#### **SHORT UPDATES:**

- **Update on NR 428 proposal:** Dennis Koepke said the Bush administration is enforcing Clinton administration guidance on this. Three issues need to be resolved: (1) Revising the averaging and trading provisions so that EPA can approve them using the agency’s economic incentive guidance. (2) Creating a new definition and emission limits for integrated coal-to-gasification combined cycle utility plants; DNR did not include this category at first because Wisconsin doesn’t have any plants with such modern equipment. (3) Developing a definition and a protocol for repowering utility units from dirty to very clean, so that we can put on an emissions cap. The Natural Resources Board will receive the green sheet package prior to the April 2002 meeting.
- **Mobile 6 model:** Bob Lopez said this is the first major update to the standard mobile-source emissions model in at least five years. States will be transitioning from Mobile 5a to Mobile 6 by the end of 2003, which will have an impact on transportation conformity budgets, assessment of conformity plans, transportation improvement plans, and overall transportation plans. In addition states must craft any new SIP submittals using Mobile 6. The new model is not expected to have an impact on existing Rate of Progress or attainment plans, but it does have implications for 8-hour ozone planning and for PM2.5 and haze SIPs. The next major conformity assessments and TIPs will be based on Mobile 6. Lopez noted that Mobile 6 incorporates all federal regulations and changes since 1992 and reflects that current vehicle catalysts last longer than previously projected and that car engines are more durable than they used to be. Mobile 6 does trade some emission credits from I/M programs against credits from new-car emission standards, and acknowledges that motorists are driving cars many more miles than previously believed.
  - ✓ Cutshall asked if DNR would convert the mobile source emissions budgets in existing SIPs and transportation plans using Mobile 6. Lopez said DNR will probably transition from Mobile 5 to Mobile 6 during the next round of conformity analysis.
  - ✓ If Mobile 6 shows higher emissions with the same input data, Walker asked, would that violate the ozone SIP? Lopez said that possibility has been factored into Mobile 6 so that EPA will hold states harmless if that result occurs. Mooney noted that EPA has policies on how the transition from Mobile 5 to Mobile 6 should take place. Walker said that at some point, increased emissions resulting from the model change might have to be accommodated through an early SIP revision.
  - ✓ Yunker said that the draft Mobile 6 model seems to show increased VOC emissions in the six-county severe ozone nonattainment area in 2005-07. This increase could be significant enough to stop transportation projects in those counties, which could be difficult to explain to the public. Eagan suggested that the Conformity Work Group should discuss this. Mooney said EPA would not go back and reopen approved SIPs in response to Mobile 6 emission inventory changes.

- ✓ Ernie Stetenfeld said that I/M appears to be less effective under Mobile 6, and asked how Mobile 6 changes emission reductions due to reformulated gasoline and on-board diagnostics. Lopez said the results are too detailed to be explained at this meeting.
  - ✓ **Moving forward on the 8-hour ozone standard:** Lopez said that while pro-active planning has been on hold due to litigation on the 8-hour standard, DNR foresees no changes to its core air quality monitoring efforts but does expect to see real changes in permitting. DNR is depending on voluntary emission reduction program in its planning for attaining the 8-hour standard.
  - ✓ Mooney said that EPA is working on UVB issues and expects some court decisions on the 8-hour standard this spring, so the agency might begin work on a timeline for moving forward. A big issue is how EPA will engage the public and stakeholders. Working groups are trying to resolve big issues like how to designate areas, determining boundaries, control programs and transitioning to the 8-hour standard. EPA plans several public meetings around the country in March and April. They hope to promulgate designations by 2004, so will probably use 2001-02-03 ozone data in designating areas.
- Rob Kennedy asked whether Wisconsin is likely to violate the 8-hour standard based on monitoring data for the one-hour standard. Mooney said EPA already knows that monitoring data for the eastern tier of Wisconsin counties, those closest to Lake Michigan, already shows they are within 10% of the 8-hour standard.

**INFORMATIONAL ITEM: NR 445 Revisions:** Andrew Stewart noted the air program's goals for its hazardous air pollutants (HAPs) program: to protect public health, prevent problems from occurring and do both in as reasonable a manner as possible. DNR is trying to be sensitive to the potential impacts of the rule revision. Stewart said the current HAPs rule, chapter NR 445, contains emission standards and requirements for over 400 pollutants, carcinogens and non-carcinogens organized in five tables. DNR wants to update the rule to reflect current science. We plan to do this by expanding the rule to cover about 200 more chemicals and reorganizing the lists of chemicals. The DNR has spent a lot of time studying how chemicals are considered for inclusion in the rule. DNR is proposing to set regulatory thresholds based on the potency of a chemical, rather than whether it is a known or suspected human carcinogen. This will allow the department to focus on the more significant sources emitting carcinogens, as well as allowing it to consider various compliance measures that give sources added flexibility without sacrificing public protection. DNR also wants to reduce the administrative burden for sources. A formal advisory committee has held 15 meetings over more than two years. About 20-25 of the 35-40 official members routinely attend. DNR would like to bring a proposed rule to the Natural Resources Board this summer, perhaps by June. If the Board authorizes DNR to move forward, there would be three to five public hearings during the summer. Stewart noted that DNR has also had many informal meetings with affected industries across a wide range of major industrial source categories, as well as other stakeholders such as environmental and public health groups, committees and consultants; participated in a DOT-sponsored workshop; and put together a collaborative business impact analysis including a series of surveys done through the Dept. of Commerce Small Business Clean Air Assistance Program. Preliminary findings from a meeting with WMC were presented to the advisory group on February 4<sup>th</sup> and will be posted on the DNR website in the near future. Through this long, intense process, DNR and the advisory committee have found some ways to reduce the regulatory burden on sources, especially smaller sources that don't have access to consultants or lots of technical information. The NR 445 web page on the DNR website contains a lot of information. Eagan commended the toxics advisory groups for doing a good job reaching out to affected parties and listening to people's concerns.

**Mercury rule:** Jon Heinrich said the NRB authorized the DNR to propose a mercury reduction rule about three years ago, and authorized public hearings last summer on the draft rule. Secretary Bazzell asked the Air Management program to establish a citizen advisory committee and a technical advisory group. Last fall the DNR held five public hearings and received over 2,000 written comments. The two advisory groups got started last fall and have been met frequently.

- The public comments raised issues concerning:

- The schedule and stringency of mercury reductions from four electric utilities over 15 years (a 90% reduction after 15 years).
- Possible impacts of 90% reductions on electric reliability, future fuel use, and cost to ratepayers. If utilities must get 90% reductions, they must plan to move away from coal as their primary fuel.
- A requirement to hold down growth of mercury emissions in the state applies to electric generation and process operations. Sources would have to apply offsets to be allowed any new growth in mercury emissions.
- The relationship between state regulations and pending federal activities--for example, multi-pollutant legislation or Maximum Achievable Control Technology (MACT) standards being proposed for utility and other boilers.

Heinrich said the citizen advisory committee likely will present a report to Secretary Bazzell this spring, then DNR will go back to the Natural Resources Board with a revised mercury rule. At this time there is no projected schedule for when the board will see the rule's green sheet package.

**Voluntary reductions registry:** Eagan said that DNR has received NRB authorization to hold public hearings on its voluntary emission reductions registry (VERR) rule. The hearing will be held in March. DNR hopes to move forward quickly to finalize this rule to ensure that any reductions above mandatory requirements are included in the registry.

**Other issues:** Ed Wilusz asked about the "MACT hammer". Eagan said this federal provision will require affected facilities to submit MACT hammer permit applications to the department by May 15<sup>th</sup>.